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SUPREME COURT OF THE UNITED STATES.

No. 150.

ROBERT P. DODGE, PHILIP A. DARNEILLE, EMILIE DARNEILLE, AND WILLIAM L. DUNLOP, APPELLANTS,

vs.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

24 (1)

FILED OCTOBER 15, 1874.

Dec 2 1876
Affirm
Justice Swayne

SUPREME COURT OF THE UNITED STATES.

No. 150.

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1 *Bill of Complaint.—Filed May* 17, 1873.

In the supreme court of the District of Columbia, this 17th day of May, A. D. 1873.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, complainant,
vs.
ROBERT P. DODGE, PHILIP A. DARNEILLE, Frederick W. Jones, William L. Dunlop, and Emilie M. Darneille, defts.

No. 3217. Equity. Docket 12.

To the judges of the supreme court of the District of Columbia:

The Freedman's Savings and Trust Company brings this its bill against Robert P. Dodge, Philip A. Darneille, Frederick W. Jones, William L. Dunlop, and Emilie M. Darneille, and thereupon complains and says as follows:

First. The complainant is a corporation duly organized under and in pursuance of an act of Congress entitled "An act to incorporate
2 the Freedman's Savings and Trust Company," approved March 3d, 1865, and acts amendatory thereof, and doing business in the city of Washington, in the District of Columbia, by virtue of said authority.

Second. The said defendants are residents of the said District of Columbia, and the said defendant Emilie M. Darneille is the wife of the said Philip A. Darneille.

Third. On the nineteenth day of January, 1869, the said defendant Robert P. Dodge, being indebted to one Benjamin Darby in the sum of thirteen thousand dollars, ($13,000,) made and delivered to said Darby three certain promissory notes, bearing date on said 19th day of January, 1869, payable, with interest, twelve months after the date thereof, to the order of Benjamin Darby, one of said notes being for the sum of two thousand dollars, and one for four thousand dollars, and the third for the sum of seven thousand dollars. And to secure the payment of the said promissory notes the said Robert P. Dodge and Caroline
3 H., his wife, duly executed and delivered to the defendants Frederick W. Jones and Philip A. Darneille a certain deed, bearing date on the 19th day of January, 1869, whereby the said grantors conveyed to said Jones and Darneille, in trust, certain parcels of real estate situated in the city of Georgetown, in said District, and particularly described as follows:

I. For the first parcel of real estate, beginning on the south side of Water street and at the end of a line drawn westerly on said street from the southwest corner of High and Water streets one hundred and thirty feet and six inches, and running from thence westerly twenty-five feet and six inches; thence running southerly and parallel with High street seventy-six feet; thence running westerly and parallel with Water street fourteen feet; thence southerly and parallel with High street to the channel of the Potomac River; thence easterly and parallel with Water street twenty-five feet and six inches; thence northerly and parallel with High street to the point distant seventy-six feet south from
4 Water street; thence easterly and parallel with Water street fourteen feet, and thence by a straight line to the beginning; together with the free and uninterrupted use and right of, in, and to fourteen feet of ground fronting on the south side of Water street and adjoining the above-described parcel of ground and premises, and here-

tofore and now used as an alley, being the ground and premises which were conveyed to the late Frances Dodge by Jeremiah Orme, by deed dated the 25th day of July, A. D. 1850, and recorded among the land-records for said county and district, in liber J. A. S., No. 15, folio 370, with the warehouse thereon and wharf attached thereto.

II. For the second parcel of real estate, beginning at a point on the west side of Montgomery street distant one hundred and twenty feet south from the corner formed by the intersection of the south line of Stoddard street with the west line of Montgomery street, and from thence running south on said Montgomery street thirty-nine feet; thence running westerly and parallel with Stoddard street one hundred and twenty feet; thence northerly and parallel with Montgomery street thirty-nine feet; and thence easterly and parallel with Stoddart street one hundred and twenty feet to the place of beginning, with the dwelling-house and other improvements thereon.

III. And for the third parcel of real estate, beginning at a point on the east side of Congress street distant three hundred and seven feet and six inches from the corner formed by the intersection of the east line of Congress street with the south line of Road street, and running thence southwardly by and with the eastern line of Congress street sixty-nine feet and six inches; thence easterly by and with the southern boundary-line of the premises conveyed by Harriett Williams to Washington Beck, by deed dated June 24th, A. D. 1835, and recorded in the same land-records, in liber W. B., No. 56, one hundred and twenty-seven feet; thence northerly sixty-seven feet and six inches to the south line of an alley fourteen feet in width, opening into Road street, and laid out for the use of the premises now being described, and other parcels of ground binding on said alley; and thence running westerly one hundred and twenty-seven feet to the place of beginning, with the dwelling-house and other improvements thereon.

Fourth. The said deed of trust authorized, empowered, and made it the duty of the said trustees, Frederick W. Jones and Philip A. Darneille, upon any default being made in the payment of any or either of the said promissory notes, and upon the request of the holder of any or either of said notes then due and not paid, to sell the said real estate, or so much thereof as might be necessary, and out of the net proceeds arising from such sale to pay to the holder or holders of said notes the amount that might then remain unpaid thereon; and the said deed of trust also authorized the said trustees, upon the full payment by said Robert P. Dodge of the said notes, interest, insurance, and other costs and charges, specified in said deed, and not otherwise, to release and reconvey the said real estate to the said defendant Robert P. Dodge. All of which will more fully and at large appear by the said deed of trust, which was duly recorded in liber No. 5, folio 476, of trusts and releases, one of the land-records of the District of Columbia, a true copy of which is herewith filed, marked "Exhibit A," and referred to as part of this bill.

Fifth. The complainant is informed and believes, and therefore charges, that the said Frederick W. Jones and Philip A. Darneille fully accepted the trusts reposed in them by the said deed, and agreed to perform the duties imposed by the same.

Sixth. The said promissory notes herein mentioned and described were duly indorsed in blank by the said Benjamin Darby, and were afterwards, for a valuable consideration, sold and delivered to the said complainant, the Freedman's Savings and Trust Company, and the said

promissory notes have ever since been and now are owned and held by the said complainant.

8 Seventh. On the 19th day of January, 1871, as complainant is informed and believes, the sum of eight hundred and twenty-seven dollars and nineteen cents ($827.19) was paid to the complainant by the said Robert P. Dodge, or his duly-authorized agent, for interest on the said promissory notes, and on the eighth day of February, 1872, the further sum of eight hundred and twenty-seven dollars and nineteen cents ($827.19) was paid to the complainant by the said defendant Dodge, or by his duly-authorized agent, for interest on the said promissory notes; and, except the said interest, no other or further sum has ever been paid on the said notes, and the whole thereof (except the said interest so paid) is due from the said defendant Robert P. Dodge to the complainant.

Eighth. On or about the 22d day of July, 1871, as the complainant is informed and believes, the said trustees, Frederick W. Jones and Philip A. Darneille, unlawfully, and in violation of the trust reposed in them by the said deed of trust, executed and delivered to the said

9 defendant Robert P. Dodge a deed of release, in due form, bearing date December 31st, 1870, whereby they attempted to release from the operation of the said deed of trust and to reconvey to the said Dodge the parcels of real estate hereinbefore firstly and secondly described, and the said release was so executed and delivered without the authority, knowledge, or consent, and in fraud of the rights of the said complainant, it being at that time the owner and holder of the said promissory notes; which said deed of release was recorded in liber 652, folio 254, one of the land-records of the District of Columbia, and a true copy thereof is herewith filed, marked "Exhibit B," and referred to as part of this bill.

Ninth. The complainant is informed and believes, and therefore charges, that the said Robert P. Dodge procured the execution and delivery of the said release by the said trustees, well knowing that the said promissory notes were then due and wholly unpaid.

10 Tenth. The said parcel of real estate hereinbefore thirdly described and not mentioned in said deed of release is not of sufficient value, as the complainant is informed and believes, to pay the amount still due on the said promissory notes.

Eleventh. On the 15th day of March, 1872, the said defendants Robert P. Dodge and wife, as complainant is informed and believes, executed in due form of law, and delivered to the defendant Philip A. Darneille, a deed in fee, dated on said day, for the alleged consideration of $5,250.00, whereby he conveyed to said Darneille the real estate hereinbefore secondly described, together with other real estate; which deed was recorded in liber 676, folio 264, of the land-records of said District; and afterwards, and on or about the 15th day of August, 1872, the said defendant Philip A. Darneille, by a deed duly executed and delivered, conveyed to the defendant William L. Dunlop the said real estate hereinbefore last referred to, in trust for the benefit of the defendant

11 Emilie M. Darneille, the wife of the said Philip A. Darneille, which said deed was recorded in liber 692, folio 185, of said land-records. The complainant is informed and believes, and therefore charges, that the said trust-deed to William L. Dunlop was voluntary and without valuable consideration. And the complainant is advised and believes, and therefore charges, that the two deeds last hereinbefore mentioned are void and of no effect as against this complainant.

The said complainant therefore prays:

1. That the said deed of release executed and delivered by the said trustees, Frederick W. Jones and Philip A. Darneille, to the defendant Robert P. Dodge, be declared and decreed to be null, void, and of no effect as against the complainant.

2. That the deed in fee, made by the defendant Robert P. Dodge to the defendant Philip A. Darneille, bearing date on the 15th day of March, 1872, and also the deed of trust made by the said defend-
12 ant Philip A. Darneille to the defendant William L. Dunlop, bearing date on the 15th day of August, 1872, be and that each of them be declared null, void, and of no effect, so far as they, or either of them, relate to any of the parcels of real estate mentioned and conveyed in said deed of trust dated on the 19th day of January, 1869, and so far as they, or either of them, affect or relate to the rights and interest of the complainant.

3. That the three parcels of real estate mentioned in this bill, and conveyed to said defendants Frederick W. Jones and Philip A. Darneille, in trust, by said trust-deed dated January 19th, 1869, together with all easements, appurtenances, and improvements appertaining thereto, be sold under the decree of this court, and that out of the proceeds arising from such sale the amount due to the complainant on the said three promissory notes be paid.

4. That the complainant may have judgment against the said
13 defendant Robert P. Dodge for the amount due upon said promissory notes, and that the complainant may have execution thereof as at law.

5. That the said defendants Frederick W. Jones and Philip A. Darneille may be decreed to pay to the complainant all loss and damage to it resulting from or occasioned by the unlawful execution and delivery of the said deed of release to the defendant Robert P. Dodge.

6. That the complainant may have such other and further relief in the premises as may be agreeable to equity and good conscience.

THE FREEDMAN'S SAVINGS & TRUST CO.,
By GEO. W. STICKNEY, *Actuary.*

JNO. H. COOK, *Solicitor for Pltf.*
ENOCH TOTTEN, " " "

DISTRICT OF COLUMBIA, *ss:*

I, George W. Stickney, being first duly sworn, do depose and on
14 my oath say that I am the actuary of the above-named complainant; that I have read the above bill of complaint, and know the contents thereof; and that the facts therein stated positively are true, and that the facts therein stated upon information and belief I believe to be true.

GEO. W. STICKNEY.

Subscribed and sworn to before me this 17th day of May, 1873.
R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS, *Assistant Clerk.*

Exhibit A to bill.

ROBT. P. DODGE ET UX. to FREDERICK W. JONES & AL. } Exhibit A. Trust. Recorded 26 January, 1869—2.20 p. m.

This indenture, made this nineteenth day of January, in the year of

our Lord eighteen hundred and sixty-nine, by & between Robert P. Dodge and Caroline H. Dodge, his wife, of the first part, and Frederick W. Jones and Philip A. Darneille, of the second part, and
15 Benjamin Darby, of the third part, all of Georgetown, in the county of Washington, District of Columbia, witnesseth:

Whereas the said Robert P. Dodge, for and in consideration of a certain house and premises in Georgetown, purchased of the said Benjamin Darby, now is and stands justly indebted unto the said Benjamin Darby in the sum of thirteen thousand dollars, lawful money, for which he has passed to the said Benjamin Darby three certain several promissory notes, bearing even date with these presents—one for the sum of two thousand dollars, one for the sum of four thousand dollars, and the other for the sum of seven thousand dollars, (the same having been divided into these respective amounts at the request of the said Benjamin Darby,) all and each of the said notes bearing interest, and payable to the order of the said Benjamin Darby twelve months after date; and whereas the said parties hereto of
16 the first part are desirous of affording adequate and sufficient security for the full, prompt, and punctual payment of all and each of said promissory notes, with all the proper costs, charges, and interest accruing thereon, according to the tenor and effect of said promissory notes, and for that purpose and to that end the said parties hereto of the first part now here execute these presents:

Now, therefore, this indenture further witnesseth, that the said parties hereto of the first part, for and in consideration of the premises and the sum of five dollars to them in hand paid by the said Frederick W. Jones and Philip A. Darneille, at the ensealing and before the delivery of these presents, (the receipt whereof is hereby acknowledged,) have given, granted, bargained, and sold, aliened, enfeoffed, conveyed, and confirmed, and do hereby give, grant, bargain, and sell, alien, enfeoff, convey, and confirm unto the said Frederick W. Jones and Philip A. Darneille and the survivor of them, their and his heirs and as-
17 signs, forever, all of those certain parcels of ground and premises lying and situate in said Georgetown, and more particularly described as follows: that is to say, for the first parcel of ground, beginning on the south side of Water street, and at the end of a line drawn westerly on said street from the southwest corner of High and Water streets one hundred and thirty (130) feet and six (6) inches, and running from thence westerly twenty-five (25) and six (6) inches; thence running southerly and parallel with High street seventy-six (76) feet; thence running westerly and parallel with Water street fourteen (14) feet; thence southerly and parallel with High street to the channel of the Potomac River; thence easterly and parallel with Water street twenty-five (25) feet and six (6) inches; thence northerly and parallel with High street to the point distant seventy-six (76) feet south from Water street; thence easterly and parallel with Water street 14 feet, and thence by a straight line to the beginning.

Together with the free and 'interrupted use and right of, in, and
18 to fourteen (14) feet of ground fronting on the south side of Water street and adjoining the above-described parcel of ground and premises, and heretofore and now used as an alley, being the ground and premises which were conveyed to the late Francis Dodge by Jeremiah Orme, by deed dated the 25th day of July, A. D. 1850, and recorded among the land-records for said county and District in liber J. A. S., No. 15, at folio 370, with the warehouse thereon and wharf attached thereto.

Also for the second parcel of ground beginning at a point on the west side of Montgomery street, distant one hundred and twenty (120) feet south from the corner formed by the intersection of the south line of Stoddard street with the west line of Montgomery street thirty-nine (39) feet, thence running westerly and parallel with Stoddard street one hundred and twenty (120) feet, thence northerly and parallel with Montgomery street thirty-nine (39) feet, and thence easterly and parallel with Stoddard street one hundred and twenty (120) feet to the place of beginning, with the dwelling-house and other improvements thereon.

19 And for the third and other parcel of ground and premises, beginning at a point on the east side of Congress street distant three hundred and seven (307) feet and six (6) inches from the corner formed by the intersection of the east line of Congress street with the south line of Road street, and running thence southwardly by and with the eastern line of Congress street sixty-nine (69) feet and six (6) inches, thence easterly by and with the southern boundary-line of the premises conveyed by Harriett Williams to Washington Beck by deed dated June 24th, A. D. 1835, and recorded in the same land-records, in liber W. B. No. 56, one hundred and twenty-seven (127) feet, thence northerly sixty-seven (67) feet and six (6) inches to the south line of an alley fourteen feet in width opening into Road street, and laid out for the use of the premises now being described and other parcels of ground binding on said alley, and thence running westerly one hundred and twenty-seven (127) feet to the place of beginning, with the dwelling-house and

20 other improvements thereon, being the same premises conveyed to said Robert P. Dodge by the said Benjamin Darby by deed bearing even date herewith;

Together with the buildings, rights, privileges, and appurtenances to the said several parcels of land belonging or in any wise appertaining, and all the estate, right, title, interest, claim, and demand whatsoever, whether at law or in equity, of the said parties hereto of the first part of, in, and to the same.

To have and to hold said several parcels of ground and premises, with the appurtenances and every part and parcel thereof, as hereinbefore described, unto the said parties hereto of the second part and the survivor of them, their, his, and their heirs and assigns for their, his, and their use. In trust nevertheless for the following uses and purposes, and none others; that is to say, in trust to suffer and permit the said Robert P. Dodge, his heirs and assigns, to retain possession of said parcels of land and premises and receive the rents and profits thereof for his

21 and their own use until default made in the payment of either or any of said promissory notes when and as the same shall become due and payable according to their several tenor and effect, and upon the full payment of each and all of the said promissory notes, with all interest, costs, and charges thereon, and any money advanced for insurance as hereinafter provided for, with interest thereon, and any costs and half-commissions which may have accrued in and about this trust (it being agreed that if any of said parcels of ground and premises shall be advertised for sale as authorized by this deed, the trustees or trustee acting shall be entitled to half-commissions on the amount of the debt secured, which with the cost of advertising shall be a lien on the same) without a sale having been made of any of said parcels of ground as hereinafter authorized to release and reconvey the same, or if a sale shall have been made as a part thereof, to release and reconvey the residue

22 to said Robert P. Dodge, his heirs and assigns, clear and discharged of and from the encumbrance hereby created. But should default

be made in the payment of any or either of the said promissory notes when the same shall become due and payable according to the several tenor and effect of said notes, then, upon the request of the holder of any or either of said notes then due and not fully paid, the said parties of the second part, and the survivors of them, shall have power, and it shall be their and its duty, to sell said parts of ground and premises with the appurtenances, or so much thereof as may be necessary, at public auction, at such time and place, upon such terms, in such parcels, and after such notice as to the said parties hereto of the second part or the survivor of them shall seem most for the interest of all parties concerned, the proceeds of such sale or sales to be disposed of as follows:

In the first place, to pay the necessary expenses attending the execution of this trust, including therein a commission of five per
23 centum on the gross proceeds of such sale or sales to the trustees or trustee acting, and any money advanced per insurance, as hereinafter provided for, with interest thereon, to the person making the advance.

In the second place, to pay whatever amount of the principal sums of each and all of said notes as shall then remain unpaid, with all interest and costs due thereon, to the holder or holders thereof; and, lastly, the surplus, if any, to pay over to the said Robert P. Dodge, his heirs, executors, administrators, or assigns. And upon the compliance with the terms of sale by any purchaser at any sale made as aforesaid, the said parties hereto of the second part, and the survivor of them, shall convey all the estate, right, and interest of the said parties of the first part of, in, and to the parcel of land and premises, with the appurtenances, sold to the purchaser thereof, in fee simple, without any obligation on the part of such purchaser to see to the application of the purchase-money.

24 And the said Robert P. Dodge, for himself and his heirs, executors, and administrators and assigns, hereby covenants, promises, and agrees to and with the said parties hereto of the second part, and the survivor of them, their, and his heirs and assigns, that he and they shall and will effect and keep the buildings upon said premises insured, by responsible insurers, in the sum at least seven and half thousand dollars, against damage by fire, and assign the policy of such insurance to the said parties hereto of the second part, and the survivor of them, their and his heirs and assigns, so that, in case of damage to said buildings by fire, the said trustees, and the survivor of them, shall receive the money becoming payable under such policy or policies, and apply the same as they shall deem best to secure the objects set forth in these presents; and in default thereof it shall be lawful for any person holding any or either of said notes to effect such insurance, and the premium paid for the same shall be a lien upon said premises and to be added to the amount of debt secured by these presents.

25 In testimony of all which the said Robert P. Dodge and Caroline H. Dodge have hereto set their hands and affixed their seals the day and year first hereinbefore written.

ROBT. P. DODGE. [SEAL.]
CAROLINE H. DODGE. [SEAL.]

Signed, sealed, and delivered in presence of—
JENKIN THOMAS.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Jenkin Thomas, a notary public in and for said county and district,

duly appointed, qualified, and acting in said office, do hereby certify that Robert P. Dodge and Caroline H. Dodge, his wife, parties to a certain deed bearing date the 19th day of January, A. D. 1869, and hereto annexed, personally appeared before me, in my county aforesaid, the said Robert P. Dodge and Caroline H. Dodge being each personally well known to me as the persons named in and who executed the said deed; and then and there the said Robert P. Dodge acknowledged the
26 same to be his act and deed. And I do further certify that the said Caroline H. Dodge, being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her by me, she, the said Caroline H. Dodge, then and there acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this twenty-fifth day of January, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] JENKIN THOMAS,
Notary Public.

Exhibit B.

FREDERICK W. JONES & AL. *to* ROBERT P. DODGE. } Exhibit B. Release. Recorded July 24, 1871.

27 This indenture, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy, between Frederick W. Jones and Philip A. Darneille, both of Georgetown, District of Columbia, trustee', of the first part, and Robert P. Dodge, of the same place, of the second part:

Whereas the said Robert P. Dodge and wife heretofore made and executed a certain deed of trust, bearing date on the nineteenth day of January, in the year eighteen hundred and sixty-nine, and thereby conveyed to the said parties of the first part, and to their heirs and assigns, all the following-described pieces or parcels of ground lying and being in Georgetown, District of Columbia, beginning for the first piece on the south side of Water street, and at the end of a line drawn westerly on said street from the southwest corner of High and Water streets, 130 feet 6 inches, and run from thence westerly 25 feet 6 inches; then southerly and parallel to High street 76 feet; then westerly and
28 parallel with Water street 14 feet; then southerly and parallel with Water street to the channel of the Potomac River; then easterly and parallel with Water street 25 feet 6 inches; then northerly and parallel with High street to a point distant 76 feet south from Water street; then easterly and parallel with Water street 14 feet, and then by a straight line to the beginning;

Together with the free and uninterrupted use and right of, in, and to 14 feet of ground fronting on Water street and adjoining the above lot of ground, &c.; and beginning for the second piece of ground and premises at a point on the west side of Montgomery street distant 120 feet south from corner of Stoddard and Montgomery streets, and run south on Montgomery street 39 feet, then run westerly and parallel with Stoddard street 120 feet; then north parallel with Montgomery street 39 feet, and then easterly to the place of beginning, to secure a certain debt, all of which will fully appear by reference to said deed,
29 which is duly recorded in liber T & R, No. 5, folio 476, one of the land-records of Washington County, District of Columbia.

And whereas the said debt has been fully paid and satisfied by the said Robert P. Dodge, and the said party of the second part is thereby entitled to a reconveyance of said-described premises, and to have the same released and discharged of and from all lien, claim, demand, or incumbrance by reason of said deed of trust or anything therein contained:

Now, therefore, this indenture witnesseth that the said parties of the first part, trustees as aforesaid, for and in consideration of the premises aforesaid, and further the sum of one dollar, lawful money of the United States, to them now in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold,
30 released, and conveyed, and do by these presents grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns forever, all the hereinbefore-described premises, and all the rights, privileges, and appurtenances to the same belonging or in anywise appertaining.

To have and to hold the same unto and to the use of the said party of the second part, his heirs and assigns forever, as in his first and former estate, free, released, and discharged of and from all lien, claim, or incumbrance by reason of said deed of trust.

In testimony whereof the said parties of the first part, as trustees as aforesaid, have hereunto set their hands and seals on the day and year first hereinbefore written.

F. W. JONES, *Trustee.* [SEAL.]
PHILIP A. DARNEILLE, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. C. THOMAS.

DISTRICT OF COLUMBIA,
County of Washington, set:

31 I, George C. Thomas, a notary public in and for the District and county aforesaid, do hereby certify that Frederick W. Jones and Philip A. Darneille, parties to a certain deed bearing date on the thirty-first day of December, A. D. 1870, and hereto annexed, personally appeared Frederick W. Jones and Philip A. Darneille, being personally well known to me to be the persons who executed said deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this twenty-second day of July, A. D. 1871.

[NOT'L SEAL.] GEO. C. THOMAS,
Notary Public.

FIRST NATIONAL BANK,
July 22, 1871.

F. W. JONES and P. A. DARNEILLE, *Trustees:*

You are hereby authorized to sign the within release.

WM. S. HUNTINGTON.

32 *Summons to answer.—Issued May* 17, 1873.

In the supreme court of the District of Columbia, May 17th, 1873.

THE FREEDMAN'S SAVINGS & TRUST CO., compl't, *against* ROBERT P. DODGE ET AL., DEFENDANTS. } No. 3217. Equity. Docket 12.

The President of the United States to Robert P. Dodge, Frederick W. Jones, William L. Dunlop, and Philip A. Darneille & Emilie M., his wife, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Asst. Clerk.

Marshal's return.

"Summoned all.

"A. SHARP,
"*Marshal.*"

MAY 17, 1873.

33 *Answer of Robt. P. Dodge.—Filed June* 20, 1873.

Supreme court, Dist. of Columbia.

THE FREEDMAN'S SAVING' AND TRUST COMPANY *vs.* ROBERT P. DODGE ET AL. } Answer of Robert P. Dodge. 3217. Equity. Docket 12.

1. I admit the incorporation of the complainant as averred.
2. I admit the averments of paragraph No. 2.
3. I admit the execution and delivery of the promissory notes and deed of trust as alleged.
4. I admit the copy marked "Exhibit A," filed with the bill of complaint, to be a true copy of the deed of trust, and refer thereto for the contents of said deed.
5. I admit that Jones and Darneille accepted the trusts of said deed.
6. I do not know and cannot admit that said promissory notes were endorsed in blank by Benjamin Darby and sold and delivered to
34 complainant for a valuable consideration, and have ever since been and are now owned by complainant.

But I deny that said notes were ever so sold and assigned before their maturity or until they were overdue, paid, and satisfied. And I further state the history of said notes as follows:

In February, 1869, about a month after my purchase from Benjamin Darby of the property on Congress street, being the third piece described in the bill, I leased the same to Wm. S. Huntington for six

months, at a certain rent payable monthly. He paid the rent monthly until August of the same year, when he agreed to purchase the property for the amount of my note, secured as stated in the bill, and to pay for the same by taking up said notes at maturity. He thereupon ceased to pay rent, the property was transferred to him on the tax-books, and he paid the taxes thereafter accruing. In January, 1870, on the day
35 when my notes fell due, he sent to me to inquire where the notes were. I sent to him the bank-notices received by me, and thereupon he paid the notes and shewed them to me in his hands as paid.

The conveyance by me to him not having been prepared, I did not demand possession of the notes at that time. I subsequently repeatedly offered to complete the transaction by executing a deed, and asked him to deliver my notes, but was put off by him with various excuses; which conduct I attributed to his absorption with other business and his disposition to trifle. Desiring to have the other pieces of property embraced in the deed of trust released, I caused such a release to be prepared, dated December 31, 1870, and also a deed from myself and wife to said Huntington, bearing the same date. It was not, however, until July, 1870, that I could get his attention to the matter, and on the 22d of that month he wrote an order to the trustees to execute
36 said deed of release, and it was accordingly done. It will therefore be seen that if said notes were ever transferred to said complainant, it was after they were overdue and paid and said deed of trust was satisfied and discharged.

7. I wholly deny that I ever paid to complainant any sum whatever for interest on said notes, either directly or through an agent, and for the reasons already stated deny that anything is due on said notes.

8. I admit that a deed of release was executed as alleged, by the trustees, Jones and Darneille, but deny that it was done unlawfully as in violation of their trust. I do not know whether it was done without the knowledge of the complainant, but do not admit that they then held said notes, and require proof of the fact, if it be material.

9. I wholly deny the averments of paragraph No. 9.

37 10. I do not know and cannot admit that the property not released is insufficient in value to pay the amount of said notes with interest.

11. I admit the conveyances alleged from me to Darneille, and from said Darneille to Wm. L. Dunlop, but deny that they are void and of no effect as against the complainant.

And having fully answered, I pray to be hence dismissed with my reasonable costs, &c.

ROBT. P. DODGE.

I, Robert P. Dodge, do solemnly swear that I have read over the answer above subscribed by me, and that the matters therein stated of my personal knowledge are true, and those stated on information and belief I believe to be true.

ROBT. P. DODGE.

Sworn to and subscribed before me this nineteenth day of June, 1873' at Washington.

[SEAL] GEO. C. THOMAS,
Notary Public.

38 *Pro-confesso Sept. 2, 1873.*

In the supreme court of the District of Columbia.

FREEDMAN'S SAVINGS & TRUST CO.
vs.
DODGE & DARNEILLE, JONES & DUNLOP. } 3217. Equity docket, 12.

The clerk will enter a decree pro-confesso against defts. Jones and Dunlop, for want of appearance, and against defendants Darneille and wife, for want of answer, plea, or demurrer.

ENOCH TOTTEN,
Solr. for Plaintiff.

SEPT. 2, 1873.

Pro-confesso entered and docketed as per precipe.
By the clerk.

Replication.—Filed Sept. 10, 1873.

FREEDMAN'S SAVINGS & TRUST CO.
vs.
ROBERT P. DODGE & OTHERS. } 3217. Equity.

The said complainant joins issue with the said defendant Dodge upon his answer.

ENOCH TOTTEN,
Counsel for Complt.

39 *Deposition for complt.—Filed Feb. 26, 1874.*

In the supreme court of the District of Columbia.

FREEDMEN'S SAVINGS AND TRUST COMPANY
vs.
ROBERT P. DODGE ET AL. } Equity, 3217.

At an examination held in this cause before me, an examiner in chancery, personally appeared George W. Stickney, Frank H. Gassaway, William H. Burnan, and William B. Webb, who were duly sworn, and the narratives contained in the within depositions were taken down by me in writing from the statements of the witnesses, and the depositions were then read in the hearing of the witnesses, who then signed each for himself in my presence.

JNO. CRUIKSHANK,
Examiner in Chancery.

FEBRUARY 26, 1874.

40 GEORGE W. STICKNEY, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiff, deposeth and saith:

In 1870 and 1871 I was assistant actuary in the Freedmen's Savings and Trust Company, and now actuary.

Ques. Did your bank some time in 1870 buy three notes made by R. P. Dodge, one of the defendants, being the notes described in the bill

of complaint? and, if yea, state from whom the bank bought them, when they were bought, and what sum was paid for them.

Ans. The bank bought them January 24, 1870, and gave $13,786$\frac{50}{100}$. From whom they were bought I can't say. Col. Eaton bought them and gave a check for them. There is marked across the check, R.
41 P. Dodge, in pencil. (True copies of said notes and check are attached hereto, marked "Exhibits G. W. S., Nos. 1, 2, 3, & 4," instead of the originals, by consent of counsel.) There has been interest paid twice, $827,19 paid January 19, 1871, on all the notes and accrued interest on checks, at 6 per cent. Next payment was same amount, February 8, 1872. That was all. The payments were made by Mr. Huntington, I think.

Ques. Do you know anything about the property last described in the bill as being conveyed to secure these debts, and being the house formerly occupied by Mr. Huntington, on Congress street, in Georgetown; and, if you do, would it in your opinion sell for enough to pay these notes?

Ans. I know the property and it would not sell for enough.

42 Cross-examined by Mr. Cox:

The indorsements on the notes indicate that one came from the Metropolitan Bank, one from the First National, where it was held for collection; the other, the second in order, has no mark indicating the name of a bank, but has a mark indicating that it was secured in some bank. It is numbered 754. This is the $4,000 note. I did not consider the property of sufficient value to secure the notes when they were purchased. There were two other pieces of property mentioned in the deed of trust.

G. W. STICKNEY.

Examination adjourned until Wednesday, October 15, 1873, at 1 p. m.

JNO. CRUIKSHANK,
Examiner in Chancery.

43 FRANK H. GASSAWAY, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the Freedmen's Saving and Trust Company, deposeth and saith:

I am acquainted with the Freedmen's Saving and Trust Company, and Robt. P. Dodge. I knew Mr. Wm. S. Huntington during his life-time, and from 1869 to his death. About four months prior to Mr. Huntington's death, he requested me to see Mr. Dodge at his office, and give him some information in regard to the payment by Mr. Huntington of the interest on the notes in question; in substance, that the interest had been or would be paid; Mr. Dodge having seen or written to Mr.
44 Huntington in regard to some delay on the latter's part in regard to the payment of the interest on these notes. Mr. Huntington died March 27, 1872. On that occasion, Mr. Dodge said that he had urged Mr. Huntington to take up the notes, and in that way come into possession of the house. He said a good deal that I don't recollect in regard to the cheapness and desirability of the house and its increasing value, and that a very few thousands spent upon it would greatly increase its value, and he concluded by asking me to call Mr. Huntington's attention to these points, and to urge him to buy the house. I told him that Mr. Huntington had either paid the interest that day or would do it immediately, Mr. Dodge having notified him that the interest was
45 unpaid. I don't know of my personal knowledge that Mr. Dodge

had notified Mr. Huntington. Mr. Huntington told me that Mr. Dodge had either written or told him that the interest was due, and that he wanted him to attend to it. It was about that I went round to see Mr. Dodge.

(Mr. Cox, for defendants, objects to hearsay testimony.)

I don't say that he said the interest was due. He said it was either due or overdue; at any rate there had been some neglect on the part of Mr. Huntington.

Ques. Did Mr. Dodge seem to know who held these notes?

Ans. Yes, he spoke about their being in the Freedmen's Bank, and spoke about taking them up; or rather he said they were in Eaton's hands. Eaton was at that time the actuary of the Freedmen's

46 Bank. Mr. Huntington was during this time cashier of the First National Bank. I never had I believe any other conversation with Mr. Dodge about this business, either before or afterwards. I know that Mr. Huntington paid the interest on these notes held by the Freedmen's Bank on one occasion. I do not remember the date. It was I think in 1871. Mr. Huntington lived at the time of his death in Georgetown, D. C., in one of the houses in question. He had lived there a couple of years at least. I am the administrator of the estate of Huntington. There was no conveyance of this house in which Huntington lived from Dodge to Huntington, in my knowledge. No person belonging to the estate of Mr. Huntington has possession of the house in which Mr. Huntington formerly lived.

47 Ques. Did you ever have any conversation with Mr. Huntington touching his relation to this house, or his agreement with Dodge about it; and, if so, when was it, where was it, and what was it?

(Objected to as hearsay testimony.)

Ans. At dinner at Mr. Huntington's house, a month or six weeks before his death, conversation being about a handsome house erected by Mr. Bradley nearly opposite to Mr. Huntington's, I inquired why he did not take the house of Mr. Dodge and put a mansard roof on it, build a brick stable, and generally improve it. Mr. Huntington replied that the arrangement he had made with Mr. Eaton was such an economical one, that he preferred to continue it as long as possible. That is all that I remember that occurred. When I saw Mr. Dodge at

48 his office on F street, when he desired me to urge Mr. Huntington to buy the house, I said it would be unwise for Mr. Huntington to buy the house, as, under his arrangement with Col. Eaton, he was only paying 6 per cent., whereas money required for the purchase was worth at least 10 per cent. to him. I don't recollect that Mr. Dodge said anything in response to this, or, rather, I don't recollect what he said. Mr. Dodge said nothing to me on this occasion as to whether or not these notes had been paid by anybody. I think Mr. Dodge did not specify the terms on which he wanted Huntington to buy the house. He said nothing about a previous understanding or agreement except that he had urged Huntington to buy the house.

49 Cross-examined:

I have no definite means of finding the date of my interview with Mr. Dodge. I am sure I am within a few months of it. I had heard of these notes before; don't recollect when they matured. Mr. Huntington did not ask me to inquire when the notes were due. Mr. Huntington was to pay this interest in lieu of rent. I understood this from both Mr. Dodge and Mr. Huntington. I stated to Mr. Dodge at this interview that the arrangement which Mr. Huntington had made with Mr.

Eaton, made it unwise for Mr. Huntington to buy the house. The arrangement with Eaton was to pay 6 per cent. instead of paying the rent to Dodge. Huntington was to pay the interest on the notes
50 on any terms he could arrange with Eaton. I understood the arrangement to be that he was to pay 6 per cent. interest on the notes. He was not to pay Mr. Dodge any rent besides. I understood that the rent paid to Mr. Dodge up to that time was $100 per month; about $1,200 a year.

Ques. By this arrangement, if Mr. Dodge still retained the ownership of the house, did he not lose the difference between the rent at about $1,200, and the interest on the $13,000 at 6 per ct.?

Ans. No; because Mr. Dodge would have been compelled to pay the regular rate of ten per cent. I am sure that Mr. Dodge did not ask me to urge Mr. Huntington to pay for the house, and not to buy it. I know it because he narrated the advantages the house possessed.

51 Examination adjourned until further notice.

JNO. CRUIKSHANK,
Examiner in Chancery.

NOV. 28, 1873.

WILLIAM H. BARNARD, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the Freedmen's Saving and Trust Company, deposeth and saith:

I am a clerk in the First National Bank, under the receiver, and in January, 1870, I was collection-clerk in the First National Bank. I know about one note signed R. P. Dodge. I know there was a note due January 24, 1870. It was held in Georgetown, D. C., for $2,121, including interest. It came from the Chat'am National Bank of New York, to the First National Bank, and was sent by us to Georgetown. It
52 was paid, and the money remitted to the Chat'am National Bank. The note was charged to the Farmers and Mechanics' Bank of Georgetown. That was the way the money came to my desk. It was sent to Georgetown for collection. I cannot say whether the note was taken up in Georgetown. It was actually paid in Georgetown, because I got the money. I got the money by a charge ticket to the Farmers and Mechanics' Bank of Georgetown. (Ticket marked "W. H. B., No. 1," filed here. This is a copy of the original ticket, and has been examined by the examiner.) The figures "1869" should be "1870." It is printed and omitted to be marked out. The books show the date to be 1870. The Farmers and Mechanics' Bank kept a deposit with us. I
53 don't know to whom the note was delivered; undoubtedly to whoever paid it. (Witness here shown exhibit marked "W. H. B., No. 3.") This represents money kept by the First National Bank to the credit of the Farmers and Mechanics' Bank of Georgetown. (This is a copy certified by examiner to be correct.) The ticket W. H. B. No. 2 was made by the paying-teller, and not at my desk. I don't know anything about it. (Witness here shown Exhibit W. H. B. No. 3.) This is an advice of a credit by the Farmers and Mechanics' Bank of Georgetown. These three papers belong to the records of the First National Bank of Washington. I knew Col. Eaton, the actuary of the
54 plaintiff, during his life-time. I do not know whether he took up these Dodge notes at our bank. It is my impression that Col. Eaton inquired about them, but it is so long ago that I can't say whether they were these notes or not. In the usual course of business, ticket

Exhibit W. H. B. No. 2 would go to the receiving-teller, but as Latham, the paying-teller, was the nearest to Mr. Huntington's desk, he gave him sometimes business to attend to which came from his room. This may possibly have been the case in this instance.

Ques. Have you the ledger of the bank containing individual accounts for the period in question?

Ans. I have.

Ques. Please refer to the account of W. S. Huntington, and tell us whether or not he drew any large sum or sums of money about the 24th January, 1870?

55 Ans. I refer to the ledger, and find that Mr. Huntington drew, January 11, 1870, $184.50; January 12, 1870, 4.50. He next drew, March 1, 1870, 104.50. There are no amounts drawn by him in January or February except what I have mentioned.

Cross-examined:

The note I testified about was sent to the First National by the Chat'am National Bank of New York for collection. It was paid January 24, 1870, the day on which it is entered as due, which would indicate it as being paid at maturity. The money was remitted to the Chat'am National Bank Jan'y 24, 1870. The note was in the possession of the Farmers and Mechanics' Bank on that date. As far as our books
56 show, the note was either in possession of our bank or the Farmers and Mechanics' Bank until it was paid, from time of its receipt for collection.

The credit-ticket (W. H. B., No. 2) means that the amount mentioned was deposited to the credit of the Farmers and Mechanics' Bank on account of certain notes of R. P. Dodge. I don't know whether this ticket includes the $2,000 or not. I never saw that note in the possession of Mr. Huntington, that I remember.

Redirect:

I don't know who deposited the money to pay the notes. The 23' January, 1870, was Sunday.

W. H. BARNARD.

57 FRANK H. GASSAWAY recalled for plff.

I was in the room of Mr. Huntington at the First National Bank about June or the first of July, 1871, during two conversations of Mr. Dodge with Mr. Huntington, in which Mr. Dodge requested Mr. Huntington to release certain wharf-property from some mortgage in which Mr. Huntington was in some way interested, on the ground that there would be enough property left to secure the money covered by said mortgage. On the first of these occasions, I understood Mr. Huntington to say that he would consider the matter, and on the second occasion, I understood him to say that he would consult Col. Eaton in regard to it. I don't remember what Mr. Dodge said when Mr. Huntington said he
58 would consult Col. Eaton. I understood both conversations to be in regard to releasing the same property. I don't remember how precisely urgent Mr. Dodge was. He pressed the matter, however. I understood Mr. Huntington to say that he would see Colonel Eaton in regard to it. In speaking of Mr. Dodge, I mean Mr. Robert P. Dodge, the defendant in this case.

Cross-examined:

There was no one present at these conversations that I remember except Mr. Huntington, Mr. Dodge, and myself. I paid no special atten-

tion to the conversations. I knew nothing that I remember about these notes at that time, that I remember. Mr. Huntington left for Europe, I think, in the latter part of July, 1871. I do not remember whether
59 any was made in conversation to his intended departure to Europe. Mr. Dodge did not insist upon the release as a matter he was entitled to, as far as I remember. I am tolerably shure that Colonel Eaton's name was mentioned on the last occasion I speak of. I only remember one interview with Mr. Dodge in regard to these notes; had one at Mr. Huntington's instance, to which I testified before. I know nothing of Mr. Huntington having ordered a release. Mr. Huntington said nothing on that occasion about seeing Mr. Darneille or Mr. Fred. Jones, that I remember. I sat directly at Mr. Huntington's elbow, almost touching him, so that I could hardly avoid hearing him speak on most occasions.

F. H. GASSAWAY.

60 WILLIAM B. WEBB, of lawful age, a resident of Washington, D. C., attorney at law, being sworn on part of the plaintiffs, deposeth and saith:

I known William S. Huntington for several years. (Witness here shown check marked "Exhibit W. B. W., No. 1.") This is the handwriting of Mr. W. S. Huntington. I have frequently seen him write. I should say the signature is in his initials, written by his own hand. In my opinion the whole written part of the check is in Mr. Huntington's handwriting.

Cross-examined:

On comparing the word "rent" with the rest it looks a little differently. It does not appear as firm or as well written as the rest, but I
61 cannot that I think it was written by a different hand. It may have been. If that word were presented to me by itself, I wouldn't be able to say whether it was written by Mr. Huntington. I should say, if the check were presented to me as a whole, that it was written by Mr. Huntington, though there is a difference in the word "rent."

W. B. WEBB.

Mr. Cox, for defendant, objects to admission as evidence of check marked "Exhibit W. B. W., No. 1," as being of the nature of hearsay evidence.

JNO. CRUIKSHANK,
Examiner in Chancery.

JANUARY 28, 1874.

G. W. STICKNEY recalled for plaintiff.

I have seen Mr. William S. Huntington write. His handwriting is familiar. This check (Exhibit W. B. W., No. 1) is in Mr. Hunt-
62 ington's handwriting. My signature is on the back of it. This check was given to me in payment of interest on the Dodge notes. It appears on our books credited February 8, 1872, the date of the check.

Cross examined:

The word rent, I think, is by the same hand. It looks like the words "Jan'y 24, '72," but a little different from the other words.

G. W. STICKNEY.

FREEDMEN'S SAVING AND TRUST COMPANY
vs.
ROBT. P. DODGE. } January 28, 1874.

It is stipulated between counsel for plaintiff and counsel for defendant that the original notes and check, of which Exhibits G. W. S.,
63 Nos. 1, 2, 3, and 4 are copies, are genuine, and that the signatures to them respectively were made by the parties by whom they purport to be signed.

JNO. CRUIKSHANK,
Examiner in Chancery.

Exhibit G. W. S., No. 1.

In the Supreme Court of the United States.

ROBERT P. DODGE *et al.*, Appellants,
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY. } October Term. No. 150.

It is hereby stipulated and agreed that the endorsements on the back of the note for $7,000.00, as printed in the record of this cause, on page 18, are imperfect, in this: that there is, in addition, a stamp of the National Metropolitan Bank, in oval form, with these words, to wit:

"Nat. Metropolitan Bank, D. C.,
"Jany. 24, 1870,"

and that the said stamp may be added.

ENOCH TOTTEN,
Counsel for Appellee.
WALTER S. COX,
Counsel for Appellant.

Recd. on within Jan'y 19, 1871, eight hundred twenty-seven $\frac{19}{100}$ dollars int. to Jan'y 24 '71, ($827.19.) Recd. Feb'y 8th, '72, interest (6%) to Jan'y 24, '72, eight hundred and twenty-seven $\frac{19}{100}$ dollars.

(In pencil:) Interest due Jan'y 1, '72, $1,286.67.
" $1,290.62 int. due Jan'y 1, '72.
Paid Jan'y 24, 1870, for these notes, 13,786.50.

Exhibit G. W. S., No. 2.

$7,000.00.] GEORGETOWN, D. C., 19*th January*, 1869.

Twelve months after date I promise to pay to the order of Benjamin Darby seven thousand $\frac{}{100}$ dollars, with interest from date, for value received.

(Signed) ROBT. P. DODGE.

65 (On back of note the following:)

7,000.

Robt. P. Dodge, 423.50, 19 Jan'y, 1870. Benj. Darby, N. Y. W. B. Todd. 13,786.50.

Exhibit G. W. S., No. 3.

$4,000.00.] GEORGETOWN, D. C., 19 *January*, 1869.

Twelve months after date I promise to pay to the order of Benjamin Darby, four thousand $\frac{00}{100}$ dollars, with interest, value received.

ROB. P. DODGE.

(Secured by deed of trust of even date to F. W. Jones and P. A. Darneille, properly stamped and recorded in the District of Columbia.

(On back of note the following:)

4,000.

R. P. Dodge, 242, 19–22 Jan., 70. Without recourse. Benj. Darby. D. F. Robinson. 28, 754, D. F. Robinson.

[2 cent stamp.]

Exhibit G. W. S., No. 4.

WASHINGTON, *Jan'y* 24, 1870.

The First National Bank of Washington, pay to , or
66 bearer, thirteen thousand seven hundred eighty-six $\frac{50}{100}$ dollars.

D. L. EATON,
Actuary F. S. & T. Co.

$13,786 $\frac{50}{100}$.

[Blue stamp on back punched.]

Exhibit W. H. B., No. 1.

Charge Fars. & Mechs. Geotn:

Dodge	$2,000
Int	121
	2,121

18830 Chat'am.
Jan'y 24, 1869.
(Signed) BURKET, *for Cashier.*

Exhibit W. H. B., No. 2.

Credit F. & M. Bk. Geotn., D. C., R. P. Dodge notes, $6,363.
(Signed) LATHAM, *for Cashier.*
Jan'y 24, 1870.

67 *Exhibit W. H. B., No. 3.*

H. M. Sweeny, prest. W. Laird, jr., cashier.

FARMERS & MECHANICS' BANK,
Georgetown, D. C., Ja'y 25, 1870.

W. S. HUNTINGTON, Esq.,
Cashier.

Your favor of the 24th with enclosures is received.
I enclose:

	A. R. Ray & Bro, ck	83 33
To credit.	J. Ramsburg & Son, ck	737 14
Ck, 455,	D. T. Hamlinck & Co	200
" 210,	for collection	
Durall 161.68	J. V. Lewis	100 & int.
* Dodge, 2121,	T. S. Conner	1007
		10 * & int.
		1,020 47 Cr.

Very respectfully, yours,
(Signed) W. LAIRD, JR., *C.*

* This note was paid T. Karny at your bk. I credited you and charge you inter.

68 *Exhibit W. B. W., No. 1.*

[2 cent stamp.]

WASHINGTON, *Feb'y* 8, 1872.

First National Bank of Washington, D. C., pay to 1 year int., house notes, (rent,) Jan. 24, '72, or bearer, eight hundred twenty-seven [19] dollars. $827.19.

WM. S. H.

(Endorsed on back :) G. W. Stickney, aty.

[Stamp of Freed'm's Bank.]

69 *Depositions for defdt.—Filed Feb.* 26, 1874.

In the supreme court of the District of Columbia.

FREEDMEN'S SAVING AND TRUST CO. *vs.* ROBERT P. DODGE ET AL. } 3217, equity.

At an examination held in this cause before me, an examiner in chancery, personally appeared Robert P. Dodge, David F. Robinson, Benjamin L. Blackford, William B. Todd, Joseph H. Bradley, jr., and Frederick W. Jones, on behalf of the defendants, who were duly sworn, and the narratives contained in the within depositions were written down by me from the statements of the witnesses, were read by me in their presence, and signed by them in my presence.

JNO. CRUIKSHANK,
Examiner in Chancery.

FEBRUARY 26, 1874.

70 ROBERT P. DODGE, of lawful age, a resident of Georgetown, D. C., one of the defendants in this cause being sworn, deposeth and saith :

My name is Robert P. Dodge; 56 years of age; a resident of Georgetown, D. C. I am one of the defendants in this cause. I bought the house in which Mr. Huntington lived and died, on Congress street, Georgetown, D. C., from Benjamin Darby, on or about January, 1869. I gave him for it my three notes for $7,000, $4,000, and $2,000, payable in one year with interest, secured on the property in question, and two other pieces of property. On February 15, 1869, I rented the house to William S. Huntington for 6 months, at $100 per month. In the course of two or three month s, I concluded to sell the house. (Witness here
71 hands in a printed and written lease, marked "R. P. D., No. 1.") This is the original lease. One or two parties approached me about purchasing, and I named it to Mr. Huntington. He told me to tell them it was not for sale, as he would give as much for it as anybody else. No conclusion was arrived at about the purchase, until about August, 1869, when his lease terminated, when it was agreed that he should take the house by paying my notes at maturity. I learned meanwhile that Mr. Huntington had told persons who were looking at the house that he had purchased it. (Objected to by counsel for plaintiffs.) Of course I called on Mr. Huntington for no more arrears of rent. There was none offered to be paid. When the notes were maturing in

72 January, 1870, Mr. Huntington asked me where they could be found, and I furnished him with the bank-notices. This was before the maturity of the notes. On the day they matured he sent for me, and I went to his office between 2 and 3 o'clock, I think, and he showed me the notes. I thank' him for paying them, and he replied, "I told you I would. My honor was at stake." At subsequent casual meetings with him, he expressed himself as not prepared to receive a deed.

In December, 1870, a broker informed me that he could sell my frame house, one of the other two pieces of property covered by the deed of trust, and I got Mr. Cassin to prepare this deed of release which I now offer in evidence, (marked "Exhibit R. P. D., No. 2.") The frame
73 house was not sold at that time. At the same time I prepared a deed for Mr. Huntington, leaving the name blank, which I now put in evidence, (marked "Exhibit R. P. D., No. 3.")

Hearing that Mr. Huntington was going to Europe in July, 1871, I took the release to him, for his authority to the trustees to execute it. He read the release in my presence, and then wrote the on one of his cards to the trustees. (Card is attached to the deed of release and marked "Exhibit R. P. D., No. 4.") The last time I saw Mr. Huntington, which was a few weeks before his death, he remarked, "I'll soon be ready for your deed," or words to that effect.

Shortly after Mr. Huntington's death, Col. Eaton, actuary of the Freedmen's Bank, informed me in Jay Cooke & Co's. bank that he held
74 some notes of mine which he had taken from Mr. Huntington.

(Counsel for plaintiff objects to all above conversations and transactions with Mr. Huntington as incompetent to this issue.)

Col. Eaton said Mr. Huntington promised to pay 10 per cent. on these notes, but had only paid him 6 per cent. I referred him to Governor Cooke to arrange the matter, and told Col. Eaton I had sold the property. That was the first time I ever knew the bank ever had possession of the notes. I presume Mr. Huntington paid the taxes and insurance after the year 1869, as I had the property transferred to him and I have never been since charged with the taxes or insurance. (Objected to.)

Since Mr. Huntington's death I paid the insurance under pro-
75 test myself, as the title still existed in my name. I have read Mr. Frank Gassaway's testimony in this cause. I have had no conversations with him as testified. He may have come as a messenger to find out where the notes were maturing. I recollect no particular conversation with Mr. Gassaway on the subject of the notes or the property.

Cross-examined:

I concluded to sell the house about April, 1869. There was no written agreement between myself and Mr. Huntington about the sale of this house. The day I went to the bank and saw Mr. Huntington have the notes was the 22d January, 1870, between 2 and 3 o'clock p. m.,
76 the day the notes matured. If the 22d was Sunday, then it was the day the notes matured, which would in that case have been Saturday. I saw him at his office, in the First National Bank, sitting behind his desk. I did not inspect the notes materially. I saw they were my notes. They were all three there. I looked at them. They are the notes in evidence here. Mr. Huntington did not assign any particular reason for not being ready for the deed. I merely inferred either that he did not want to hold real estate, or that he wanted the deed made out in some other name, and that was why I wrote his name in pencil on the deed.

Ques. Why did you not take the notes from Huntington or have them cancelled?

77 Ans. Because I had no deed ready for him at the time the notes were paid, and of course I could not take them from him, unless I had something by which to cancel them.

Ques. Then you intended that Mr. Huntington should hold the notes until the property was conveyed to him?

Ans. Not at all. My impression was that the notes were virtually cancelled, and that no use would be made of them.

Ques. Did you ask Huntington for the notes at the time of this interview?

Ans. Not at all. I was so much elated to find the matter settled that I didn't think of deed, notes, or anything else at the time. I subsequently demanded the notes from Mr. Huntington, and he said

78 he was not ready for the deed. I repeatedly offered to give him a deed. I did not make out the deed until the one was made which is now in evidence. I supposed he would arrange the whole matter at once. I wanted the release to enable me to sell one of the other pieces covered by the deed of trust. I don't remember particularly whether I asked for the notes when I offered the release to Mr. Huntington for his approval.

Ques. Did you ever pay either of these three notes?

Ans. I did not myself.

Ques. Didn't you know, or have reason to believe, during Huntington's life-time that these notes were held by the Freedmen's Bank (the complainant) or by Eaton?

79 Ans. I did not. Col. Eaton told me of it. He was the first person who told me of it, after the death of Mr. Huntington.

Ques. Didn't you ever ask Mr. Huntington to have this property released before July 22, 1871?

Ans. I may have done so. My object in asking it then was to enable me to dispose of the other property. I admit I was careless about it. I only insisted upon it when I found he was going out of the country. I have an indistinct recollection of having asked to have the property released before that time, but the property I expected to sell was not sold, and I didn't go to Mr. Huntington about it. I think he said he was willing to release it.

Ques. In any of these interviews, when you demanded a release,

80 did Huntington say to you, or intimate to you, that he had transferred these notes?

Ans. I have no recollection of anything of the kind except that at the time I last saw him, my impression was that some friend was in some way connected with the purchase of the *the* house. He did not say he had transferred the notes, but intimated that some friend was helping him in the purchase.

Ques. When Mr. Huntington refused to give up your notes to you because he was not ready for the deed, did you not suspect that he had sold these notes or transferred them to some third party?

Ans. My impression was that he refused to give them to me for fear of being known as a real-estate owner.

Ques. Who pasted Huntington's card to that release?

81 Ans. I do not remember whether it was done by him, myself, or the trustees, but I do remember that the trustees refused to sign the release without that paper. I carried the release to the trustees and asked them to sign it. Darneille was my partner and made the sale for Darby. I told the trustees the notes were held by Hunt-

ington, and they would not sign the release until he gave that authority. I forget who signed it first.

Ques. You state that you had the property transferred to Huntington. What do you mean by that?

Ans. I mean that I had it transferred to him on the tax-books of the corporation of Georgetown. I presume it stands still on the tax-
82 books in his name. It has never stood in my name since 1869, for which year I paid the taxes. I saw the transfer to Huntington stated opposite to my own assessment, in the assessment-book, in the handwriting of Mr. George W. Beall, I believe, the collector.

Ques. Were you present during Mr. Gassaway's examination in this case?

Ans. I was not present. I was not notified of the time of his first examination. I was present at the time he was subsequently recalled. I never made any conveyance of that property to Mr. Huntington, or to anybody for him. The title is still in me.

ROBT. P. DODGE.

Examination adjourned until Friday, Feb. 6, 1874, at 2 p. m.

JNO. CRUIKSHANK,
Examiner in Chancery.

83 DAVID F. ROBINSON, of lawful age, a resident of Georgetown, D. C., a witness produced and sworn on behalf of the defendant, deposeth and saith:

I am acquainted with Messrs. R. P. Dodge, Darneille, and F. W. Jones, defendants in this cause. (Witness here shown note for $4,000, a copy of which is filed as an exhibit.) I held this note. I negotiated it in Jan'y, 1869. I mean I took it in negotiation from Benj. Darby. I held it during the year and put it in the Farmers and Mechanics' Bank for collection, and when it was due it was duly paid. I have my bank-book here. I find this entry: "R. P. Dodge's note due 19–22 Jan., 1870," carried to my credit as paid—$4,242.00. Mr. Huntington sent
84 for me to come to the bank to have this note extended, and I went to see him. We had a conversation about the extension, but we did not finally conclude on any definite extension, and the note was duly honored. He did not say anything directly about the notes, any more than the general inference I would derive from the conversation about the extension.

Cross-examined:

This conversation about extension was some time before the maturity of the note. I put the note in bank for collection December 29, 1869, and the time of the interview was between Dec. 29, 1869, and January 22, 1870. The conversation was at the First National Bank of Washington.

DAVID F. ROBINSON.

85 BENJAMIN L. BLACFORD, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the defendants, deposeth and saith:

I am an insurance agent. I know Messrs. Dodge, Darneille, and Jones and Dunlop, defendants in this cause. I know all the defendants. I knew Mr. Huntington in his life-time. I know the property in which he lived and died.

Ques. Did you ever have any conversations with Mr. Huntington in relation to that property? If so, state them.

(Objected to because Mr. Huntington's statements about that house are not competent evidence.)

Ans. I have had conversations with him on the subject. I don't
86 remember who paid the insurance on that house in 1869, but in August, 1870, and '71, it was paid by Mr. Huntington. In 1870 I called on Mr. Dodge, who referred me to Mr. Huntington. I saw Mr. Huntington, who told me on inquiry that he had purchased the house and paid me the premium. Either in 1870 or 1871 he not only paid the premium, but charged me to see that the premium was always kept paid up, and said it would always be paid on presentation. I don't recollect now about the premium for 1872 exactly, but since Mr. Huntington's death Mr. Dodge has paid me insurance premiums under protest, saying that he intended charging them to the Huntington estate.

Cross-examined:

Mr. Dodge said the house did not belong to him; that in equity
87 it belonged to Mr. Huntington, but as no deed had been given, he thought he had better pay the insurance and charge it to Huntington's estate. He used the expression "under protest."

B. LEWIS BLACFORD.

WILLIAM B. TODD, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the defendants, deposeth and saith:

I know the defendants in this cause. I am a son of the late Wm. B. Todd, esq. My father held a note of R. P. Dodge, the defendant, in favor of Benj. Darby, for $7,000, payable January 19–22, 1870. He deposited it for collection on the 8th January, 1870, in the National Metropolitan Bank. I produce his bank-book, showing the entry of the note to his credit and the payment of the same.

88 Cross-examined:

I know my father held this note from the fact of hearing him speak of it, and from the entry of the same in his bank-book. I have no personal knowledge of it, except as I have stated.

WILLIAM B. TODD.

JOSEPH H. BRADLEY, jr., of lawful age, a resident of the District f Columbia, a witness produced and sworn on behalf of the defendants, deposeth and saith:

I am a lawyer. I know the defendants. I knew Mr. Huntington and the property in which he lived and died.

Ques. Had you any conversations with Mr. Huntington in relation to that property?

89 (Objected to because Huntington's statements in relation to that property are not competent evidence.)

Ans. I had. I think in March or April, 1869, understanding that Col. Dodge, the defendant, was willing to sell the property at $13,000, I contemplated buying it for my own residence. Knowing Mr. Huntington personally, and that he was occupying the house, before making any offer to Mr. Dodge, I called to see Huntington and had a conversation with him at his private office in the First National Bank, on this subject. I told him what my purpose was; that I had called to see him to let him know that if I bought it he could remain 3 or 4 months until he found it convenient to remove, and that I didn't like to make any offer without first advising him of it. He replied, "Why, I bought that

90 property last Saturday from Dodge." I said, "Of course, then, my project is at an end." I abandoned all idea of offering to buy the house. I fix the date by the fact that I purchased the property opposite 3d May, 1869, and this conversation was a short time anterior to my purchase.

JOS. H. BRADLEY, JR.

FREDERICK W. JONES, of lawful age, a resident of Georgetown, D. C., one of the defendants in this case, deposeth and saith, being duly sworn:

I am one of the defendants. I know the defendants. I knew Mr. Huntington. I know about the purchase from Darby by Mr. Dodge, the defendant, of the house in which Huntington lived and died. I
91 also know of the notes that Mr. Dodge gave Darby for the house, and I also know that as Mr. Dodge gave no cash for the purchase, the house in question was not considered good security, and Mr. Dodge put some other property in the deed of trust with it. I prepared the conveyance.

Ques. Had you any conversations with Mr. Huntington in relation to Mr. Dodge's notes to Mr. Darby for that property? If so, state them.

(Objected to, as statements of Mr. Huntington in relation to that property are not competent evidence.)

Ans. It seems to me that some person who held one of the notes, and I cannot say which, came to me at or about its maturity and wanted to know whether I would see under the deed of trust, to which I replied, "Of course," but I said Mr. Huntington owned that property,
92 and I would not think of advertising without first seeing him, Huntington, who had told me that he was the owner of the house. I asked Huntington once, I remember, "what rent he paid for the house?" To which he replied, "Nothing, I own it," or words substantially to that effect; that he had bought it from Mr. Dodge. I remember seeing Huntington shortly after that time, after the notes matured, and speaking with him on the subject; he showed me the notes and said he had paid them or taken them up, or words to that effect. My impression was that he had paid them. The person who called on me as before testified in regard to the note, was not Mr. William B. Todd. (Witness here looks at release and card marked "Exhibits R. P. D., Nos. 2 and 4.") I would never have executed that release
93 had not the authority signed by Mr. Huntington's signature, well known to me, been attached to the release.

Cross-examined:

I am sure that one of the notes shown me by Huntington was Mr Dodge's note to Darby. I presume that the others were the same notes. I recognized my hand. They are in my handwriting. There was more than one paper in the package. He held them up in his hand and said, "Here are the notes." I saw the top one and recognized my handwriting. I cannot fix the date. I think it was not long after their maturity; a week or two, or perhaps a month, after. My recollection is not clear about it. I never saw the notes after that interview
94 until to-day. Mr. Huntington either said he had paid the notes or had taken them up, or words which left the impression that they had been retired. He said nothing about a third party having taken them up. The release was executed in Darneille's office. I think Darneille asked me to come into his office and execute it. I don't recollect, but I think Mr. Dodge was present. The card was *was* pasted

on the deed of release when I signed it, I think, or it was agreed to be pasted on and recorded with the deed. I think I insisted that the card should be recorded with the release.

F. W. JONES.

95 *Exhibit R. P. D., No. 1.*

Memorandum of agreement made this fifteenth day of February, in the year eighteen hundred and sixty-nine, by and between Robt. P. Dodge, of Georgetown, D. C., of the first part, and William S. Huntington, of Washington, D. C., of the second part; that is to say, the said party of the first part in consideration of the covenants hereinafter set forth and expressed on the part and in behalf of the said party of the second part, hereby covenants and agrees to and with the said party of the second part, to lease to him, the said party of the second part, and doth hereby let and lease to him, the said party of the second part, from and after the fifteenth day of February, in the year aforesaid, from month to month, and so long as the said party of the second part shall keep his said covenants, until the full end and term of six months
96 from the day last above named, all that certain parcel of ground, messuage, and tenements, with the appurtenances hereinafter described, that is to say: One two-story brick house, situated on Congress street, Georgetown, D. C., and between Stoddard and Road streets, better known as having been owned by Benjamin Darby, of same District, and for and during the full end and term aforesaid, the said party of the second part shall, by the mere fact of the payment of the rents and keeping of the covenants hereinafter expressed, and without the necessity of any further act in the premises, and without any liability to be disturbed or ejected by the said party of the first part, have and acquire from month to month, by force of these presents, a renewal of this lease until the term aforesaid shall be fully ended and terminated; but if the said party of the second part shall make default in the payment
97 of the monthly rent or shall not truly keep and perform the covenants hereafter set forth and expressed, then and in that case the said right of renewal shall ipso facto cease and determine, anything in these presents to the contrary notwithstanding; and thereupon the said party of the first part, his heirs and assigns, shall, and may, upon one month's notice, as in ordinary cases of monthly tenancy, to the said party of the second part, or to the person or persons in possession, or by affixing such notice in writing upon a principal door of said messuage or tenements if the same be not opened to receive such notice when presented, or by affixing such notice upon some other conspicuous part of said premises, proceed to recover possession of the premises aforesaid by a summary proceeding against a tenant holding over after the
98 end and termination of his lease, under the act of assembly in such *a* case made and provided, being the act now in force in the District of Columbia; and on such proceeding the proof of such default as aforesaid and of such notice as aforesaid shall, together with these presents, be conclusive evidence of the right of the said party of the first part, his heirs and assignes, to recover the possession of the said demised premises, and these presents shall be an absolute estoppel to the said party of the second part, his executors, administrators, and assignes, to deny or gainsay any matter or thing herein stipulated and set forth.

And in consideration of the premises, he, the said party of the second part, hereby covenants and agrees to and with the said party of the

first part, that he, the said party of the second part, his executors and administrators, shall and will well and truly pay to him, the said party of the first, his heirs and assignes, as rent for the premises aforesaid for the first month, and for each succeeding month that the tenancy aforesaid shall become renewed for, a' aforesaid the monthly rent of one hundred dollars, current money of the United States, payable on the first day of each month, respectively, and month by month, save and except at all times during said term such proportional part of said rent as shall accrue and grow due during such time as said house shall, without the hindrance of the said party of the second part, be and remain untenantable by reason of accidental fire, act of God, or public enemies.

And the said party of the second part, his executors and administrators, shall and will, during the said term, at his or their proper cost and charges, well and sufficiently keep in repair the said demised premises when and as often as the same shall require, damage by accidental fire, act of God, and public enemies only excepted, and with the like exception, to surrender the premises hereby demised, at the end of said term in as good state and condition as the reasonable use and wear thereof will allow, and the said party of the second part hereby waives all other forms of notice by law required, and, by the execution of these presents, acknowledges from the said party of the first part, a notice to remove from and surrender said premises as heretofore stipulated, at the end of the term herein set forth.

Witness the hands and seals of the parties the day and year first aforesaid.

W. S. HUNTINGTON. [SEAL.]
ROB'RT P. DODGE. [SEAL.]

Exhibit R. P. D., No. 2.

F. W. JONES & P. A. DARNEILLE to ROBERT P. DODGE. } Deed of release.

This indenture, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy, between Frederick W. Jones and Philip A. Darneille, both of Georgetown, District of Columbia, trustees, of the first part, and Robert P. Dodge, of the same place, of the second part.

Whereas the said Robert P. Dodge and wife heretofore made and executed a certain deed of trust, bearing date on the nineteenth day of January, in the year eighteen hundred and sixty-nine, and thereby conveyed to the said parties of the first part and to their heirs and assigns, all the following-described pieces or parcels of ground lying and being in Georgetown, District of Columbia: Beginning, for the first piece, on the south side of Water street and at the end of a line drawn westerly on said street from the southwest corner of High and Water streets 130 feet 6 inches, and run from thence westerly 25 feet 6 inches; thence southerly and parallel to High street 76 feet; then westerly and parallel with Water street 14 feet; then southerly and parallel with Water street to the channel of the Potomac River; then easterly and parallel with Water street 25 feet 6 inches; then northerly and parallel with High street to a point distant 76 feet south from Water street; then easterly and parallel with Water street 14 feet, and then by a straight line to the beginning, together

with the free and uninterrupted use and right of, in, & to 14 feet of ground fronting on Water street and adjoining the above lot of ground, &c.; and beginning, for the second piece of ground and premises, at a point on the west side of Montgomery street distant 120 feet south from corner of Stoddard & Montgomery streets, and run south on Montgomery street 39 feet; then run westerly & parallel with Stoddard street 120 feet; then north parallel with Montgomery street 39 feet, & then easterly to the place of beginning to secure a certain debt, all of which will fully appear by reference to said deed which is duly recorded in liber
104 T. & R., No. 5, folio 476, one of the land-records of Washington County, District of Columbia.

And whereas the said debt has been fully paid and satisfied by the said Robert P. Dodge, and the said party of the second part is thereby entitled to a reconveyance of said described premises, and to have the same released and discharged of and from all lien, claim, demand, or incumbrance by reason of said deed of trust or anything therein contained:

Now, therefore, this indenture witnesseth, that the said parties of the first part, trustees aforesaid, for and in consideration of the premises aforesaid, and, further, the sum of one dollar, lawful money of the United States, to them now in hand paid by the said party of the second
105 part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and do by these presents grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns, forever, all the hereinbefore-described premises, and all the rights, privileges, and appurtenances to the same belonging or in any wise appertaining;

To have and to hold the same, unto and to the use of the said party of the second part, his heirs and assigns, forever, as in his first and former estate, free, released, and discharged of and from all lien, claim, or incumbrance by reason of said deed of trust.

In testimony whereof the said parties of the first part, as trustees as aforesaid, have hereunto set their hands and seals on the day and
106 year first hereinbefore written.

F. W. JONES, *Trustee.* [SEAL.]
PHILIP A. DARNEILLE, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
G. C. THOMAS.

DISTRICT OF COLUMBIA,
County of Washington, sct.:

I, George C. Thomas, a notary public in and for the District and county aforesaid, do hereby certify that Frederick W. Jones and Philip A. Darneille, parties to a certain deed bearing date on the thirty-first day of December, A. D. 1870, and hereto annexed, personally appeared before me, in the said county, and the said Frederick W. Jones and Philip A. Darneille being personally well known to me to be persons who executed said deed, and acknowledged the same to be their act and deed.

Given under my hand seal this twenty-second day of July, A. D. 1871.

[SEAL.] GO. C. THOMAS,
Not'y Pub.

The word "July" inserted above by me over an erasure in my certificate.

GO. C. THOMAS,
Not. Pub.

Exhibit R. P. D., No. 4.

(On back :)

FIRST NATIONAL BANK, *July* 22, 1871.

F. W. JONES & P. A. DARNEILLE:

You are here' authorized to sign the within release.

W. S. HUNTINGTON.

107 *Exhibit R. P. D., No. 3.*

This indenture, made this thirty-first day of December, 1870, between Robert P. Dodge & Caroline R. Dodge, his wife, of Georgetown, District of Columbia, of the first part, and William S. Huntington, of the same place, witnesseth: That the said parties of the first part, for and in consideration of the sum of thirteen thousand seven hundred and eighty dollars in lawful money of the United States to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, forever, the following-described real estate, lying and being in Georgetown,
D. C., beginning for the same at a point on Congress street distant
108 three hundred and seven and a half feet (307½) from the southeast corner of said Congress and Road streets, and running thence southerly by and with the eastern line of said Congress street sixty-nine and a half (69½) feet; thence easterly one hundred and twenty-seven feet, (127) feet, (said last-mentioned line being part of the southern boundary-line of the premises conveyed by Harriet Williams to Washington Beck, as per deed dated June 24th, 1835, and duly recorded in liber W. B., No. 56 of the land-records of Washington County, D. C.;) thence northerly sixty-seven and a half (67½) feet to the south line of a fourteen-foot wide alley, laid out for the use of the said described premises and adjoining lots; thence westerly one hundred and twenty-seven feet to the beginning; together with all the improvements, ways, easements, rights,
privileges, and appurtenances to the same belonging or in any-
109 wise appertaining, and all *and all* the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, whether at law or in equity, of the said parties of the first part, of, in, to, or out of the said piece or parcel of land and premises: To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit and behoof forever.

And the said parties of the first part, for themselves, their heirs, executors, & administrators, do hereby covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part and their heirs, shall and will warrant and forever defend the said piece or parcel of land and premises, with
the appurtenances, unto the said party of the second part, his heirs
110 and assigns, from and against the claims of all persons claiming

or to claim the same, or any part thereof, by, from, under, or through them, or any part or either of them.

And, further, that the said parties of the first part, and their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, *as the said party of the second part, his heirs or assigns*, or his or their counsel learned in the law, shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

* * * * * *

111 *Order for hearing.—Filed Feb'y* 25, 1874.

In the supreme court of the District of Columbia.

FREEDMAN'S SAVINGS & TRUST COMPANY
vs.
R. P. DODGE ET AL. } 3217. Equity docket, 12.

The clerk will please set this cause for hearing at March special term.

ENOCH TOTTEN,
Solr. for Plff.

FEB'Y 25TH, 1874.
Cause set for hearing and calendared as directed.
By the clerk.

Decree dismissing bill.—Filed Mar. 12, 1874.

Supreme court of the Dist. of Columbia.

FREEDMAN'S SAVINGS AND TRUST COMPANY
vs.
R. P. DODGE ET AL. } 3217. Equity docket, 12.

This cause coming on to be heard on the pleadings and evidence,
112 and having been heard and considered, it is by the court, this 12th day of March, A. D. 1874, ordered, adjudged, and decreed, that the bill be dismissed with costs.

And from this decree complainant, by its counsel, prays an appeal, which is allowed, provided it give security, under the rule, for the payment of costs in $50.

By the court.

A. WYLIE.

Appeal to the gen. term.—Filed Mar. 13, 1874.

In the supreme court of the District of Columbia.

FREEDMAN'S SAVINGS AND TRUST COMPANY
vs.
ROBERT P. DODGE ET AL. } 3217. Equity docket, 12.

The said complainant hereby appeals to the general term from the decree rendered at the special term on the 12 day of March, 1874.

ENOCH TOTTEN,
Solr. for Plff.

113, 114 *Decree in gen. term.—Filed July* 8, 1874.

In the supreme court of the District of Columbia, in general term, July 8, 1874.

THE FREEDMAN'S SAVINGS AND TRUST COMpany *vs.* ROBERT P. DODGE ET AL.	3217. Equity docket, 12.

This cause having come on to be heard in general term, on appeal from the decree rendered in special term, and having been argued by counsel, it is, this 8th day of July, 1874, ordered, adjudged, and decreed as follows, to wit:

First. That the said decree, rendered in special term, be and the same is hereby reversed.

Second. That the lots and premises on Congress street, in the city of Georgetown, described in the bill and known as the "Huntington property," be sold under the decree of the court, and that the proceeds be applied towards the payment of the amount due on the three
115 promissory notes mentioned in the bill of complaint made by defenant Dodge.

Third. That if there be not sufficient funds derived from the sale of said "Huntington house" to pay the said notes, interest, and costs, then, in that case, the deed of release executed and delivered by the defendants, Frederick W. Jones and Philip A. Darnielle, to the defendant, Robert P. Dodge, bearing date December 31st, 1870, and in the proceedings mentioned, shall be set aside and declared null and void, and the deed executed and delivered by said defendant Dodge to the defendant Philip A. Darneille, dated the 5th day of March, 1872, shall be set aside and declared null and void so far as the same relates to the property mentioned and described in the proceedings in this cause. And that the deed of trust from said Philip A. Darneille to the defendant
116 William L. Dunlop, bearing date on the 15th day of August, 1872, shall be set aside and declared null and void, and of no effect, so far as the same relates to any of the parcels of real estate mentioned in the said bill of complaint.

And that the said property mentioned and described in the said release from the defendants Jones and Darneille to the defendant Dodge, bearing date December 31st, 1870, shall be sold under the decree of the court, (the lot last conveyed by Dodge to be sold first,) and the proceeds arising from such sale shall be applied to the extinguishment of the amount due upon the said promissory notes.

Fourth. That the plaintiff have and recover of the defendant, Robert P. Dodge, whatever amount may remain due upon the three promissory notes mentioned and described in the bill of complaint, and made
117 by said Robert P. Dodge, after the application thereto of the proceeds of said sales, together with the costs of this suit, and that the said plaintiff have execution therefor as at law.

D. C. HUMPHREYS,
In General Term.

And from this decree the defendants, by their solicitors, Messrs. W. S. Cox and Joseph H. Bradley, jr., here now, in open court, pray an appeal to the Supreme Court of the United States, and the same is allowed.

By order of the court.

Appeal-bond to S. C. U. S.—Filed July 8, 1874.

In the supreme court of the Dist. of Columbia.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY *vs.* ROBERT P. DODGE, PHILIP A. DARNEILLE, Emilie Darnielle, and Wm. L. Dunlop.	3217.	Equity-docket, 12.

118 Know all men by these presents that we, Robert P. Dodge, Philip A. Darneille, and John H. MacDaniel, are held and firmly bound unto the Freedman's Savings and Trust Company in the full and just sum of five hundred dollars, current money, to be paid to the said Freedman's Savings and Trust Company, its certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this second day of June, A. D. 1874.

Whereas the defendants in the above-entitled cause have prosecuted an appeal to the Supreme Court of the United States to reverse a decree lately rendered against them in said cause by the supreme court of the District of Columbia:

Now, the condition of the above obligation is such, that if the said defendants shall proscute their said appeal with effect, and pay all costs and damages if they shall fail to make good their plea, then the said obligation shall be void; it shall otherwise remain in full force and virtue at law.

Witness.

ROBT. P. DODGE. [SEAL.]
P. A. DARNEILLE. [SEAL.]
JOHN H. McDANIEL. [SEAL.]

Approved July 8, 1874.

D. C. HUMPHREYS, *Justice.*

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 10th day of October, 1874.

[SEAL.]

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Assistant Clerk.

(Indorsement on cover:) No. 150. Robert P. Dodge, Philip A. Darneille, Emilie Darnielle, & Wm. L Dunlop, appellants, vs. The Freedman's Savings and Trust Company. District of Columbia sup. court. Filed 15th October, 1874.

IN THE

Supreme Court of the United States.

No. 150.—October Term, 1876.

Robert P. Dodge et al., Appellants, *vs.* The Freedman's Savings and Trust Company, Appellee.	Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEE.

The Freedman's Savings and Trust Company, on the 17th day of May, 1873, exhibited its bill of complaint in the Supreme Court of the District of Columbia, wherein it alleged that it owned and held certain unpaid and over-due promissory notes made by the defendant Dodge, and that certain real estate in the City of Georgetown, which had been conveyed in trust to the defendants Jones and Darneille, to secure the payment of said notes, had been unlawfully and fraudulently released from the operation of the deed of trust, and had been conveyed by defendant Dodge to the defendant Darneille, who had conveyed it to the defendant Dunlop, in trust for the benefit of the wife of the defendant Darneille.

The bill prays for the cancellation of the release, and also of the other conveyances; for a sale of all the property covered by the original trust deed; for the application of the proceeds to the payment of the notes; for damages, if

any should be found, against Jones and Darneille; for judgment against Dodge for any balance of said notes remaining unpaid; and for general relief.

The defendant Dodge answered, admitting the making of the notes, and of the deed of trust to secure them, but insisted that the notes had been paid and extinguished through an arrangement between him and William S. Huntington for the purchase of one of the pieces of property included in the trust, and that the Trust Company obtained the notes after they were due and had been paid.

The other defendants made no defence, and a decree *pro confesso* was taken against all of them.

The case was heard upon the pleadings and evidence, and the court below, at special term, dismissed the bill. From this decree an appeal was taken to the general term, where the judgment was reversed and a decree entered according to the prayer of the bill. The case is here on appeal by the defendants from that decree.

Statement of Facts.

From the pleadings and proofs it appears that the defendant Dodge, about the 19th day January, 1869, purchased the property on Congress street, in Georgetown, called the "Huntington House," from Mr. Benjamin Darby; he paid no money for the property, but gave three promissory notes, dated on that day, payable with interest, to the order of Darby, one year after the date thereof—one being for the sum of $2,000, one for $4,000, and one for $7,000.

To secure the payment of these notes Dodge made a deed of trust conveying to the defendants Jones and Darneille, the property on Congress street, and the two other tracts mentioned in the bill.

On the 15th day of February, 1869, Dodge rented to W. S. Huntington the house which he had purchased from Darby, for the term of six months, at $100 per month, and Huntington took possession under the lease.

The defendant Dodge is the witness relied upon mainly to prove the defence. He says, (p. 20,) in the course of two or three months after the lease to Huntington he concluded to sell the house, that one or two persons spoke to him about purchasing it, and that he mentioned the fact to Mr. Huntington, and then adds: "He told me to tell them it was not for sale, as he would give as much for it as anybody else. No conclusion was arrived at about the purchase until about August, 1869, when his lease terminated, when it was agreed that he should take the house by paying my notes at maturity." On cross-examination this defendant said his "impression was that some friend (of Huntington) was in some way connected with the purchase of the house. He did not say he had transferred the notes, but intimated that some friend was helping him in the purchase." And that he "demanded the notes from Mr. Huntington and he said he was not ready for the deed." This is substantially all the evidence this defendant offers to establish his alleged agreement with Huntington.

The statements of the witnesses, Bradley, Jones, and Blackford, so far as they refer to this alleged agreement, are hearsay evidence and are incompetent, being "chance conversations" between Mr. Huntington and mere strangers. A reference to the date of Mr. Bradley's conversation with Huntington will show that the latter must have been indulging the "disposition to trifle" attributed to him by Dodge in his answer.

But it is submitted that the proof shows that the agreement between Huntington and Dodge was, that Huntington should arrange with Eaton, actuary of the Trust Company, to carry these notes on the best terms he could effect, and that Huntington, in lieu of rent, should pay the interest upon the notes.

The three notes fell due, including days of grace, on the 22d day of January, 1870.

The notes for $4,000.00 and $2,000.00 were held for collection by the Farmers' and Mechanics' Bank, of George-

town, at the time of maturity, and by some arrangement which does not appear, were taken up in pursuance of the said agreement, on the 24th day of January, 1870, at the First National Bank.—(See Ex. W. H. B., Nos. 1 and 2, p. 19.) The $2,000.00 note was held by the First National Bank for collection, but had been sent by it to the Georgetown Bank, from which it seems to have been returned to the First National Bank for payment. The $7,000.00 note was held by the National Metropolitan Bank, but when and where it was taken up does not definitely appear. On the 24th day of January, 1870, the actuary of the Freedman's Savings and Trust Company drew a check on the First National Bank for the sum of $13,786.50, the exact amount due upon these three promissory notes, and this sum of money was actually paid for these notes by the corporation, by way of an investment, and they are still held as part of its assets.

In pursuance of the agreement Huntington paid the interest on the notes and also paid the insurance premiums. One of his checks given in payment of the interest states on its face that it is for "rent."—(Page 20.)

At the time the trust deed was put upon the house to secure the payment of the notes, the property was not regarded as good security for them, and it is not now sufficient to pay the debt.—(p. 13, 25.)

Points and Authorities.

This is a controversy between the holder and the maker of promissory notes. No rights of *bona fide* purchasers, endorsers, sureties, or creditors, are involved. The only question in the case is whether or not the notes have been satisfied and extinguished.

Dodge and Huntington agreed together that H. should procure the Freedman's Savings and Trust Company to take up the three notes made by Dodge, at their maturity, upon the best terms he could make, and that Huntington, in lieu of rent for the house, should pay the interest upon

the notes. Huntington, in pursuance of this agreement, induced the managing officer of the Trust Company to invest the money of that institution in these notes, and in carrying out this project of Dodge, the full amount of the notes was advanced. Dodge, the maker, has never paid a dollar on account of his notes. He cannot now be heard to say that the notes were by this transaction extinguished. —(*Gernon vs. Mc Can*, 23 La. Ann., 84.)

Even if Dodge's version of the transaction with Huntington be true, the notes cannot be held to be paid and extinguished. The officers of the Trust Company surely did not intend to pay the notes. The fact that they took them into possession and held them shows this was not their intention. They acted in good faith.

When money is paid on account of notes by a third party not liable on them, the notes will be extinguished or not according to the intention of the party paying.—(*Harbeck vs. Vanderbilt*, 20 N. Y., 395.) And payment to a bank of notes held there for collection, by one not liable on the notes, does not amount to an extinguishment of the notes.—(*Byles on Bills*, 175; *Pacific Bank vs. Mitchell*, 9 Metcalf, 297; *Deacon vs. Stodhart*, 2 M. & Gr., 317; *Jones vs. Broadhurst*, 9 M., Gr. & Scott, 173.)

The proof shows, beyond any doubt, that Huntington did not pay out any money whatever, and that the Trust Company did in good faith advance the full amount due on these notes for the purpose of taking them up. Huntington never had the notes in his possession; if he had them in his hands, as Dodge swears, he held them only as cashier of the bank, or as the agent of the Trust Company. He was acting only for others.

If these notes, instead of being transferred to the possession of the Trust Company, had been retained by the respective holders, and actions at law had been by them instituted thereon against Dodge, notwithstanding the payment of the amount due on them by the Trust Company, a plea of satisfaction by the Trust Company, interposed on behalf

of the defendant Dodge, would have been bad on demurrer. —(*Clow vs. Borst*, 6 John., 37; *Daniels vs. Hollenbeck*, 19 Wend., 408; *Jones vs. Broadhurst*, 9 M., G. & S., 173.)

The alleged agreement between Dodge and Huntington for the purchase of the property, as stated in the evidence for the defence, is void under the statute of frauds, and the proofs are neither "clear, definite, or conclusive."—(*Purcell vs. Miner*, 5 Wall., 513.) Dodge admits that he did not take the notes when he saw them in Huntington's hands, "because I had no deed ready for him at the time the notes were paid, and of course I could not take them from him unless I had something by which to cancel them," thus leaving a *locus pœnitentiæ*. Dodge has never paid out money or parted with any property, or any interest in any property, on account of his alleged agreement, and if he has, his remedy is against the estate of Huntington.

ENOCH TOTTEN,
Counsel for Appellee.

IN THE

Supreme Court of United States.

ROBERT P. DODGE, et al.
vs.
The FREEDMEN'S SAVINGS & TRUST CO. } No. 150.

STATEMENT AND BRIEF OF COUNSEL FOR APPELLANT.

WALTER S. COX,
Counsel for Appellant.

WASHINGTON:
R. O. POLKINHORN, PRINTER.
1876.

Supreme Court of United States.

ROBERT P. DODGE, *et al.*
vs.
THE FREEDMENS SAVINGS AND TRUST CO. } No. 150.

Statement and Brief of Counsel for Appellant.

On the 19th of January, 1869, Robert P. Dodge purchased from Benjamin Darby a house and lot on Congress Street, Georgetown, for $13,000. No cash being paid, he passed his three notes of that date for $2,000, $4,000 and $7,000 respectively, payable in one year, with interest, and to secure payment gave a deed of trust on this property and two other lots situated respectively on Water Street and Montgomery Street, to F. W. Jones and P. A. Darneille, trustees.

In February of the same year he rented the house so purchased to Wm. S. Huntington for 6 months at $100 per month. About August, Huntington agreed to buy the house at the same price that Dodge had given for it, and to pay for it by taking up Dodge's notes at maturity. He did take up the notes. In July, 1871, Dodge, wishing to sell one of the other pieces of property, obtained a deed of release from the trustees, Jones & Darneille,

of both those pieces, on Huntington's order to them, after which he sold the house on Montgomery Street to Darneille.

Huntington died in March, 1872. Shortly after, Dodge was informed that the Freedman's Savings and Trust Company held his notes, having purchased them from Huntington.

This bill was filed by the Freedman's Savings and Trust Company, claiming to hold the notes as a subsisting debt of Dodge, secured on all three of the lots aforesaid, praying to have the release aforesaid set aside, and asking a decree to subject all the property, or so much as necessary, to sale for payment of the debt.

The court below, at special term, dismissed the bill. The court in General Term reversed the decree and gave the relief prayed.

The appellants maintain that the notes were taken by the Freedman's Savings and Trust Company after they were over due, and subject to all defences and equities between Dodge and the then holder, and that in fact the notes were paid and satisfied at that time, and the appellees acquired no right to them as a subsisting indebtedness.

I.

The notes were acquired by the Freedman's Savings and Trust Company after they were overdue.

The notes were dated January 19, 1869, at one year. They therefore matured January 22, 1870. They were not acquired by the company until the 24th of January.

See Stickney's deposition (Record, p. 13).

Indorsement on $2,000 note (p. 18).

Eaton's check for amount (p. 19).

Besides this, the testimony shows that S. Benjamin Darby and R. F. Cissell held the $2,000 note at the time of its payment, and it was placed on deposit in the Chatham National Bank to their credit, and sent on for collection to the First National Bank of Washington, of which W. S. Huntington was cashier, and was sent from that bank to the Farmer's and Mechanic's Bank of Georgetown. It was there paid and the money was remitted to the Chatham National Bank of New York (Barnard's testimony, p. 15); that the $2,000 note had been purchased by David S. Robinson, of Georgetown, and was owned by him until its payment (Robinson's deposition, p. 23); and the $7,000 note was purchased by Wm. B. Todd of Washington, and owned by his estate when paid. (Todd's testimony, p. 24.)

II.

At the time the appellee acquired the notes they were paid. The $2,000 note was sent to the Georgetown Bank for collection, *i. e. to be paid, and was paid.* (Barnard, p. 15.)

The $4,000 note was deposited in the same bank *likewise for collection and was there paid.* (Robinson's deposition, *ante.*)

The $7,000 note was deposited in the National Metropolitan Bank *for collection and was there paid.* (Todd's deposition, *ante.*

The deposit for collection means *for payment.* It does not authorize the bank to assign, but simply to receive a payment which extinguishes the note. The bank notices sent out by the bank are a *demand for payment.* No one had a right to take an assignment of the notes without the consent of the holders. When, therefore, some one goes and tacitly pays the money into bank when

due, and takes up the notes, the legal effect is a *payment* and *extinguishment*, whether it be by the maker or a stranger. Even if done at the request of the maker, if there be no further agreement, it is none the less a payment and gives only a right of action for money paid, laid out and expended.

That such a payment extinguishes the note, see Burr vs. Smith, 21 Barb., 262; Eastman vs. Plumer, 32 N. H., 238: Willes, J., in Cook vs. Lister, 13 C. B., 594.

The only doubt ever entertained was whether the debtor's authority or ratification was necessary. There can be no doubt of such authority in the present case, as will be seen.

Again, as the bank had no authority to transfer notes left with it for collection, any one dealing with the bank must be presumed to know that, and taking the notes from a party known to have no authority to transfer, would acquire no title. The infirmity of this title would follow the notes into the hands of any one else taking after maturity.

Byles on Bills, p. [151.]

Texas vs. White, 7 Wall., 700.

III.

But, besides, in this case, the notes were taken by the appellee from or through W. S. Huntington. He paid them under an express contract to do so, and transferred them after that contract had been performed.

It is clear that the appellee did not give the money directly to the holders of the notes. Their actuary gave one check for the entire sum, much larger than any one note. It must have been given first to some third person, who either had paid, or thereupon paid, the notes. That person was clearly Huntington.

Dodge testifies (p. 21) that Huntington inquired of him where the notes were; that he sent him the bank notices; that at the maturity of the notes, he saw Huntington, and the latter showed him the notes.

Jones testifies (p. 25) that he saw the notes in Huntington's hands, who said he had paid them, or taken them up.

Stickney testifies (p. 13) that he thinks Huntington paid the interest on the notes, and Webb and Stickney, (p. 17) both prove the check for one year's interest to be in his handwriting.

This much is uncontradicted.

The preponderance of proof clearly is, that Huntington had agreed to buy Dodge's house and paid these notes for Dodge as a payment to him for the house.

Dodge's testimony is full to the point. (p. 20.)

Robinson shows (p. 23) that sometime before the maturity of the notes, Huntington was applying to him for an extension of the notes he held.

Blackford shows (pp. 23, 24) that Huntington paid the insurance for 1870 and 1871, stating that he had bought the house.

Bradley says (p. 24) that, in the spring of 1869, Huntington told him he had bought the house and prevented him from offering to buy it.

Jones (p. 25) says, that before the maturity of the notes, Huntington told him he had bought the house.

The conduct of both Huntington and Dodge, before and after maturity of the notes is only consistent with this theory.

The only testimony against this is that of Gassaway, who speaks (pp. 13 to 16) of conversations between Dodge and Huntington, which would look to an arrange-

ment by which Huntington was to carry the notes, and pay interest instead of rent. This is contradicted by Dodge and inconsistent with the other proof.

The ground taken by the appellee was, that the money of the appellee was applied to take up these notes. If this was so, the answer is—1: that the appellee had no right to take them up to hold, and that such taking up was payment; and 2, that the notes were received through or from Huntington, in whose hands they were paid and extinguished. It makes no difference what previous agreement Huntington had with the appellee. If he agreed to sell to them or buy for them, it related to what he had no right to sell to them or buy for them.

That the notes, taken when overdue, were taken subject to all defences which Dodge might have made against the holders to whom they were paid, or against Huntington who held them afterwards. See—

Story on Promissory Notes, Sec. 190.

Andrews vs. Pond, *et al.*, 13 Pet., 65.

Fowler vs. Brantley, 14 Id., 318.

WALTER S. COX,

B. J. Semmes *of Counsel for Appellants.*

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